

Appl. No. 09/599,624
Atty. Docket No. 8135&
Amdt. dated June 22, 2005
Reply to Office Action of December 22, 2004
Customer No. 27752

REMARKS

Claims 1-63 are pending in the present application. Claims 31-35, 39-41 and 48-51 have been withdrawn from consideration, in view of a previous Restriction Requirement for which the Applicants provisionally elected, with traverse, an invention and species. Further, Claims 1-14, 16-30, 36-38, 42-47 and 51-63 stand as rejected.

Claim 15 is allowed.

In view of Claim 15 being allowed, Applicants have now amended Claims 2, 6, 7, 11-13, and 19-24 to depend from allowable Claim 15.

Claim 1 and Claims 26-63 have been canceled.

Claim 16, dependent on Claim 15, has been amended to recite that the strong chealtor is ethylene diamine tetra-acetic acid (EDTA) or triethanolamine. Support for this amendment is found in the specification at page 5, lines 23-29 and further disclosed in the example tables (Examples 18-21 and Examples 22-25) found on pages 62 and 63 of the specification.

Claim 64 is a new claim, dependent on Claim 16, wherein the strong chealtors, EDTA or triethanolamine, is present in an amount of from 0.1 to 0.3 weight percent based on the weight of the topical composition. Support for this claim is found in the example tables (Examples 18-21 and Examples 22-25) found on pages 62 and 63 of the specification, wherein EDTA is present at 0.1 weight percent and triethanolamine is present at 0.3 weight percent.

Therefore, all of the pending claims now depend from allowable Claim 15 and have been put in good standing for allowance.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Art Rejections

- 1) 35 U.S.C. § 102(a) as anticipated by, or in the alternative, § 103(a) as obvious over U.S. Patent 5,939,203 (Kappock et al)

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Claims 1-10, 13, 14, 16-22, 25-30, 36-38, 42-47, and 51-63 are rejected under 35 U.S.C. § 102(a) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Kappock et al (U.S. 5,939,203).

By virtue of the cancellation of Claims 1 and 26-63, the rejection has been avoided with respect to those claims. Applicants respectfully traverse this rejection with respect to the remaining pending claims.

Kappock et al is directed toward an aqueous coating composition comprising water, a base medium being a resin, a pyrithione salt from .01% to 2% and zinc oxide from 0.001% to 10%.

Instant Claim 15 is directed to a composition wherein the composition further comprises at least a 5 to 1 ratio of polyvalent metal salt of pyrithione to a strong chelating agent wherein the strong chelating agent is selected from the group consisting of di- or polyamines, diethylene triamine penta-acetic acid, tetraethylene triamine, ethylene diamine, diethylene triamine (DETA) or salts thereof or mixtures thereof. The Examiner has allowed Claim 15. Further, all other pending claims in the present application now depend from allowable Claim 15. Therefore, Applicant's request reconsideration and allowance of all pending claims in the present application since the outstanding rejection of the claims has been overcome by virtue of the instant claim amendments.

2) 35 U.S.C. § 102(b) as anticipated by Korean Patent Application Number 10-1997-0010124 (Park)

Claims 1-14, 16-22, 25-28, 36-38, 47, and 51-63 are rejected under 35 U.S.C. § 102(b) as being anticipated by Park (10-1997-0010124).

By virtue of the cancellation of Claims 1 and 26-63, the rejection has been avoided with respect to those claims. Applicants respectfully traverse this rejection with respect to the remaining pending claims.

Park discloses a composition comprising zinc pyrithione to a zinc salt in a ratio from 50/1 to 1/6. In Table 1, Park discloses zinc pyrithione present in a composition at

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0.5% and zinc salts at either 0.1 %, 0.5% and 1.5%. The Examiner states that Examples 8-14 show insoluble (emulsified) forms of zinc pyrithione.

Instant Claim 15 is directed to a composition wherein the composition further comprises at least a 5 to 1 ratio of polyvalent metal salt of pyrithione to a strong chelating agent wherein the strong chelating agent is selected from the group consisting of di- or polyamines, diethylene triamine penta-acetic acid, tetraethylene triamine, ethylene diamine, diethylene triamine (DETA) or salts thereof or mixtures thereof. The Examiner has allowed Claim 15. Further, all other pending claims in the present application now depend from allowable Claim 15. Therefore, Applicant's request reconsideration and allowance of all pending claims in the present application since the outstanding rejection of the claims has been overcome by virtue of the instant claim amendments.

3) 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over U.S. 5,227,156 (Weise)

Claims 1-14, 16-30, 36-38, 42-46, 51, 53 and 58-63 are rejected under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Wiese (U.S. 5,227,156).

By virtue of the cancellation of Claims 1 and 26-63, the rejection has been avoided with respect to those claims. Applicants respectfully traverse this rejection with respect to the remaining pending claims.

Wiese discloses that the activity of a thiazolinone preservative, in an anti-dandruff shampoo containing pyrithione, is maintained by adding a stabilizer comprising a zinc compound. Specifically, Wiese discloses an aqueous anti-dandruff shampoo comprising up to about 40% of a surfactant, from about 0.1% to about 2% zinc pyrithione, from about 1 to about 30 ppm of a preservative selected from the group consisting of 5-chloro-2-alkyl-4-isothiazolin-3-one, 2-alkyl-4-isothiazolin-3-one, wherein the alkyl is selected from the group consisting of methyl, ethyl, butyl, propyl and mixtures thereof, from about 0.001% to about 1% of a preservative stabilizer comprising a zinc compound selected from the group consisting of a zinc salt of an organic acid, a zinc salt of an inorganic acid, zinc oxide, zinc hydroxide, and mixtures thereof, and the balance comprising water.

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Instant Claim 15 is directed to a composition wherein the composition further comprises at least a 5 to 1 ratio of polyvalent metal salt of pyrrithione to a strong chelating agent wherein the strong chelating agent is selected from the group consisting of di- or polyamines, diethylene triamine penta-acetic acid, tetraethylene triamine, ethylene diamine, diethylene triamine (DETA) or salts thereof or mixtures thereof. The Examiner has allowed Claim 15. Further, all other pending claims in the present application now depend from allowable Claim 15. Therefore, Applicant's request reconsideration and allowance of all pending claims in the present application since the outstanding rejection of the claims has been overcome by virtue of the instant claim amendments.

In summary, allowed Claim 15 and all other pending claims which have now been amended to depend from allowed Claim 15 are believed to be in a condition for allowance, as supported by the remarks above.

Conclusion

Applicants have made an earnest effort to place their application in proper form and distinguish their claimed invention from the prior art which was applied in the December 22, 2004 Office Action. WHEREFORE, consideration of this application, consideration of the accompanying claims and claim amendments submitted herewith, withdrawal of the rejections 35 U.S.C § 102 and 35 U.S.C § 103, and allowance of Claims 2-25 and Claim 64 are respectfully requested.

Respectfully submitted,

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